MOHD. DIN

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
GUNN CHIT TUAN J
[CRIMINAL APPEAL NO. 103 OF 1983]
21 DECEMBER 1984

CRIMINAL LAW AND PROCEDURE: *Corruption - Whether there was failure of justice - Receipt - Whether proved beyond reasonable doubt - "Public body" - Whether prima facie case made out - Company a "public body" - Defence evidence - Whether given due consideration - Retrial - Whether fair to order retrial.*

The appellant was charged under ss. 3(a)(i) and 4(a) of the Prevention of Corruption Act 1961 ("the Act"). He was acquitted and discharged on the first charge but was convicted on the second charge and sentenced to imprisonment and a fine, in default one year's imprisonment. He was also ordered to pay a penalty of RM23,773.50. The second charge was that the appellant had corruptly accepted for himself a gratification, a sum of RM23,773.50 from the managing director of a company as a reward for doing an act in relation to his principal's affairs. The appellant appealed against the conviction on the second charge, the Public Prosecutor cross-appealing against sentence.

Held:

[1] There were errors in the judgment of the lower Court which had resulted in a failure of justice in the case.

(a) The prosecution had not proved beyond reasonable doubt that the appellant did in fact receive the sum alleged to have been received. All the alleged corrobative evidence was of no truly probative value on this most relevant issue in the case. PW12 was an accomplice whose evidence should have been treated with great suspicion and whose evidence should have been independently confirmed on every material circumstance.

(b) A *prima facie* case under s. 4 (a) of the Act had not been made out that the company by which the appellant was employed was a "public body" within the meaning of s. 2 of the Act and therefore defence should not have been called at all on the second charge.

(c) The defence evidence had not been dealt with adequately by the President of the Sessions Court.

[2] As nearly four years had lapsed since the commission of the offence it was not fair to order a retrial.

[Appeal allowed. Cross-appeal dismissed. Fine and penalty ordered to be repaid to appellant.]

Cases referred to:

Yap Ee Kong & Anor. v. Public Prosecutor [1981] 1 MLJ 144
Rattan Singh v. Public Prosecutor [1971] 1 MLJ 162
Chao Chong & Ors. v. Public Prosecutor [1960] 26 MLJ 238
Tan Yook Suan v. Regina [1954] 20 MLJ 116
Davies v. Director of Public Prosecutor [1954] 2 WLR 35 [1954] 1 All ER 507
Attan b. Abdul Gani v. Public Prosecutor [1979] 2 MLJ 143
Dowse v. Attorney-General, Federation of Malaya [1961] 27 MLJ 249
Public Prosecutor v. Yuvaraj [1969] 2 MLJ 89
Maheran v. Public Prosecutor [1970] 1 MLJ 255
Krishna Murthy v. Abdul Subban [1965] 1 Cri CJ 565

R. v. Saunders [1974] CAR 248
Mraz v. The Queen [1955] 93 CLR 493

Legislation referred to:
Criminal Appeal Act 1912, [NSW] [Aust] s. 6(1)
Criminial Procedure Code, s. 422
Criminal Procedure Code [ind],ss.535(1),537
Prevention of Corruption Act 1961, ss. 3(a) (i), 4(a), 18

For the appellant - Sri Ram (Dennis Appaduray with him); M/s Sri Ram & Co.; M/s Sidek Zubir Wan Sulaiman & Partners
For the respondent - Sazali bin Abdul Ghani, DPP

JUDGMENT

Gunn Chit Tuan J:

The appellant Mohd. Din @ Mohd. Nor bin Awang was on 2 March, 1983, charged for two offences under ss. 3(a)(i) and 4(a) of the Prevention of corruption Act, 1961 (Revised - 1971). The charges were before commencement of trial amended to read as follows:-

> *First Charge:*
> That you sometime in early 1980, at No. 39A, Lorong Haji Taib Dua, Jalan Raja Laut, Kuala Lumpur, in the Federal Territory, Kuala Lumpur, did corruptly solicit for yourself a gratification, to wit, a commission of RM23,773.50 from one **CHAU TAI HONG,** the Managing Director of Hua Sing Chemicals (M) Sdn. Bhd. as an inducement to you to do something in a matter likely to take place, to wit, to procure for Hua Sing Chemicals (M) Sdn. Bhd. the sale of 7,500 units of 25 kgs. pack of Desatox 325 to Smallholders Development Corporation Sdn. Bhd. and that you thereby committed an offence punishable under s. 3 (a)(i) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act No: 57).
>
> *Second Charge:*
> That you on 4 December 1980 at No. 39A, Lorong Haji Taib Dua, Jalan Raja Laut, in the Federal Territory, Kuala Lumpur, being an agent of Smallholders Development Corporation Sdn. Bhd. namely the Special Assistant to the Chairman cum Chief Executive and also being the General Manager of the said Smallholders Development Corporation Sdn. Bhd., did corruptly accept for yourself a gratification, to wit, a sum of RM23,773.50 from one **CHAU TAI HONG**, the Managing Director of Hua Sing Chemicals (M) Sdn. Bhd. as a reward for doing an act in relation to your principal's affairs, to wit, for having had procured the sale of 7,500 units of 25 kgs. pack of Desatox 325 for Hua Sing Chemicals (M) Sdn. Bhd. to Smallholders Development Corporation Sdn. Bhd. and that you thereby committed an offence punishable under s. 4(a) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act, 57).

He was acquitted and discharged on the first amended charge but was convicted on the second amended charge and sentenced on 5 September 1983, to one day's imprisonment and a fine of RM5,000 in default one year's imprisonment. He was also ordered to pay a penalty of RM23,773.50.

The following primary facts of the case found by the learned President were not disputed by the defence. In the month of December 1978 the appellant was appointed by Syarikat Pembangunan Pekebun Kecil Sdn. Bhd. (the company) to be Special Assistant to its Chairman/Chief Executive. In the course of his duties the appellant held himself out to be the General Manager when he wrote to the staff of the office as well as to members of the public. In 1979 one Chau Tai Hong (PW12) who was the Chairman of Hua Sing Chemicals (M) Sdn. Bhd. was introduced to the appellant. After the introduction the appellant told PW12 that he wanted to purchase a weed killer called Desatox for the company. After some negotiations the appellant agreed to purchase 7,500 units of 25 kgs. pack of Desatox 325 from PW12 who had brought the appellant to see one Wong See Ping (PW13) the Manager of Special Project for Ancom Sdn. Bhd. the local

manufactures of Desatox.

On behalf of the prosecution it was alleged that before purchasing the Desatox the appellant asked PW12 for some commission and that after discussions PW12 agreed to give the appellant some commission and their agreement was embodied in a letter dated 14 October 1980, (Exhibit P8) written by PW12 to the appellant. In Exhibit P8 PW12 agreed to pay the appellant a commission of 60% of the excess of the sale price over his cost price which worked out to RM23,773.50. According to PW12 he instructed a clerk in his Singapore company called Hua Sing Chemicals Pte. Ltd. to prepare a receipt dated 4 December 1980 (Exhibit P9). He took a plane from Singapore to Kuala Lumpur on that day and the appellant signed that receipt in his presence in Kuala Lumpur. The appellant was supposed to have gone to Singapore to collect the money personally but he subsequently sent someone with a letter to collect the money on his behalf. PW12 said that he paid the money to the bearer of that letter which had the appellant's signature on it. That part of PW12's evidence was of course denied by the appellant in his defence. However, at the close of the case for the prosecution the learned President in his grounds of judgment stated that he had considered carefully the evidence of the prosecution witnesses and found that the prosecution had failed to prove a *prima facie* case on the first amended charge although I would have thought, having considered the evidence recorded by him, that there was a *prima facie* case on that amended charge, but as the prosecution had not appealed against the acquittal and discharge of the appellant on the first amended charge nor has the learned President given his reasons therefor in his judgment, it was not necessary for me to consider it further.

As regards the conviction of the appellant on the second amended charge, although there were several grounds of appeal in his petition of appeal, Mr. Sri Ram, leading Counsel for the appellant, informed the Court that he would only rely on those grounds on which he proposed to address the Court for its consideration. Counsel then referred to the learned President's judgment which was written in Bahasa Malaysia and pointed out that he had failed to make any finding therein as to whether or not PW12, who was the main prosecution witness, was an accomplice. He contended that the learned President was of the view that it did not matter whether PW12 was an accomplice when he said as follows:

> Dengan keterangan-keterangan di atas jelaslah ianya menyokong (corroborate) keterangan SP12 itu. Oleh itu samada SP12 seorang pensubahat atau tidak begitu penting.

Counsel also pointed out that the learned President did not say whether PW12 was a credible witness and merely stated that PW12 could be believed just because his evidence was corroborated and not because he was a truthful witness. It was the contention of Counsel, after referring to *Yap Ee Kong & Another v. Public Prosecutor* [1981] 1 MLJ 144, 146 that it was a serious misdirection on the part of the learned President not to have evaluated the evidence of PW12, who was an accomplice, first to find if his evidence was credible and acceptable before proceeding to find out whether there was any corroboration of his evidence. It was also his contention after referring to *Rattan Singh v. Public Prosecutor* [1971] 1 MLJ 162, 164 and *Chao Chong & Others v. Public Prosecutor* [1960] 26 MLJ 238, 239 that PW12 was an accomplice as he did not lodge any police report at all and had played an active part in the transaction and was quite prepared to bribe the appellant with whom he had negotiated for that propose and as such a witness he was not covered by s. 18 of the Prevention of Corruption Act, 1961. Finally on the subject of an accomplice and the necessity for warning before accepting his evidence, Counsel referred to the judgment of Murray-Aynsley CJ (as he then was) in *Tan Yook Suan v. Regina* [1954] 20 MLJ 116 in which His Lordship, following *Davies v. Director of Public Prosecution* [1954] 2 WLR 35; [1954] 1 All ER 507 held that in a criminal trial when a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of the Judge to warn the jury that, although they may convict on his evidence, it is dangerous to do so unless it is corroborated. His Lordship also

held that that rule, although a rule of practice, now had the force of law and that when a Judge failed to warn the jury in accordance with this rule, the conviction would be quashed, even if in fact there was ample corroboration of the evidence of the accomplice. In the course of his judgement, His Lordship also referred to the case of *Lewis* 26 Cr. App. R. 110 in which the English Court of Criminal Appeal had held that where the presiding Judge at the trial had omitted to give any direction to the jury as to the danger of convicting the accused person on the uncorroborated evidence of accomplices, the conviction may be allowed to stand if, but only if, there exists corroborative evidence of such a convincing, cogent or irresistible character that the jury, if they had received the proper direction, must have come to the same conclusion. Counsel then submitted that the misdirection of the learned President of himself must be treated in the same way as an erroneous direction to a jury and after referring to the following passage in the judgment of the learned President:

> Sungguhpun saya tidak rekodkan tetapi saya telah memberi amaran yang secukupnya kepada diri saya akan bahayanya menerima keterangan SP12.

queried whether the learned President did in fact warn himself when he convicted the appellant on 5 September 1983, or whether he had merely stated so when he wrote his grounds of judgment 5 ½ months after the date of his decision.

Although the learned President did not make any finding on the credibility of PW12 or whether or not he was an accomplice and apparently forgot about the warning he had administered to himself at the close of the case for the prosecution when he convicted the appellant and when he wrote his judgment about 5 ½ months later, yet he did state as follows in his grounds of decision:

> Sekiranya beliau seorang pensubahat keterangannya boleh diterima sebab ianya disokong oleh keterangan-keterangan lain yang bebas dalam butir-butir yang mustahak. Juga, keterangan pensubahat boleh diterima sekiranya ia menunjukkan keputusan pada suatu perkara sahaja, iaitu, akan kesalahan tertuduh.

The learned deputy also contended that assuming that PW12 was an accomplice, it was his submission, after reference to *Attan b. Abdul Gani v. Public Prosecutor* [1979] 2 MLJ 143, 146 in which case Sharma J (as he then was) had summarised the law as to corroboration as enunciated by the various authorities, that there was sufficient corroborative evidence in this case. He also pointed out the following passage in the judgment of the learned President:

> Mengikut keterangan Chau Tai Hong (SP12) dengan disokong oleh saksi-saksi pendakwa dan keterangan dokumen yang dikemukakan saya berpuashati bahawa tertuduh telah terima wang tersebut.
>
> Rozita bt. Mohd Zain (SP10) dalam keterangannya menyatakan beliau cam tandatangan di dokumen P8 & P9 itu. Apabila ditunjuk P9 kepadanya beliau kata "Saya cam tandatangan di tempat "received by" Ini tandatangan Encik Mohd. Nor" dan beliau tunjukkan kepada tertuduh. Apabila ditunjuk tandatangan di sebelah kanan bawah di P8 kepadanya beliau (SP10) kata "Ini tandatangan tertuduh." SP10 cam tandatangan tertuduh sebab beliau pernah berkerja dengan tertuduh selama lebih-kurang tiga tahun.

On this point it was the submission of Counsel for the appellant that evidence to be of any corroborative value must be material. He referred to the Privy Council case of *Dowse v. Attorney-General, Federation of Malaya* [1961] 27 MLJ 249, 252 in which Their Lordships held *inter alia* that evidence, to be corroborative, must be truly probative of the relevant issue; that is, it must positively implicate the accused person and positively show or tend to show the truth of the accomplice's story that the accused committed the offence. A fact which is indifferently consistent with the accomplice's story and the accused's denial of it is neutral and supplies no corroboration. Counsel for the appellant then referred to the following passage in the learned President's judgment:

> Setelah saya meneliti keterangan saksi-saksi pihak pendakwa saya dapati mereka menyokong (corroborate) keterangan SP12. Mithalnya, pegawai bank (SP5), menyatakan bahawa cek (P22) itu telah dikeluarkan oleh Hua Sing Chemicals pada 4 December 1980. SP6 akui yang beliau

menandatangani cek (P22) itu. SP7 menyatakan beliau menyediakan baucer (P9) itu atas arahan SP12.

SP8 juga menyatakan yang beliau ada lihat rekod menunjukkan komisyen dibayar kepada tertuduh. SP8 jug beritahu bahawa Hua Sing Chemicals ada bayar RM5,000 kepada tertuduh tetapi bayaran itu tidak ada kena-mengena dengan penjualan Desatox ini.

SP13 pula menyokong keterangan SP12 dengan menyatakan tertuduh dan SP12 ada berjumpanya berkira untuk membeli Desatox.

SP16, kerani kanan akaun dengan Hua Sing Chemicals (M) Sdn. Bhd., memberitahu yang beliau menyediakan baucer P36. Beliau sediakan P36 berdasarkan kepada P8, P9, P24 dan P26 yang diberikan kepadanya oleh SP12. Baucer P36 menunjukkan bahawa jumlah S$22,575.46 dibayar kepada Mohd. Nor bin Awang, tertuduh.

and contended that the evidence which was considered by the President to be corroborative of PW12's evidence was not capable of constituting corroborative evidence.

On examining the recorded evidence of those witnesses referred to by the learned President I found that the evidence of Lee Peng Leong (PW5), a bank officer attached to the United Overseas Bank, Singapore, only showed that a cash cheque (Exhibit P22)was issued by Hua Sing Chemicals (Pte.) Ltd. on 4 December 1980. The name and address of the person who presented the cheque and received the cash at the bank was not recorded. Chow Chee Wan (PW6), who is a company director of Hua Sing Chemicals (Pte.) Ltd. and a son of PW12, said that when he signed that cheque (Exhibit P22) it was a blank cheque. Soh Kim Joon (PW7) an accounts clerk attached to Hua Sing Chemicals (Pte.) Ltd., Singapore, said that he prepared the receipt or what he called a cash voucher (Exhibit P9) on the instructions of PW12 who did not tell him what the money was for. Chow Chee Beng (PW8) said that it was his father PW12 who had told him about a commission involved in that sale and that he could have seen their company's correspondence about the commission paid to the accused and the learned President very correctly noted that a sum of RM5,000 which that witness remembered was paid to the appellant in 1982 in respect of consultancy had nothing to do with the sale of Desatox in question. The said Wong See Ping (PW13) who was the manager of the local manufacturers of Desatox confirmed PW12's evidence about a meeting between them and the appellant on 28 August 1980 in the appellant's office in Hotel Merlin, and finally Chok Saw Lan (PW16) who was the senior clerk attached to Hua Sing Chemicals (M) Sdn. Bhd. said that he prepared the document which he called a voucher (Exhibit P36) based on the Exhibits marked P8, P9, P24 which was a calculation slip, and P26 which was a receipt from Hua Sing Chemicals (M) Sdn. Bhd. acknowledging receipt from Hua Sing Chemicals (Pte.) Ltd. of a sum of S$22,575.46. After examining the evidence of those prosecution witnesses and the documents referred to by the learned President I agreed with counsel for the appellant that all the alleged corroborative evidence was of no truly probative value on the most relevant issue in this case and that is whether the prosecution had proved beyond reasonable doubt that the appellant did in fact receive the said sum of RM23,884.50. Although there was some confirmation of the evidence of PW12 yet it must be borne in mind that PW12 was an accomplice whose evidence should be treated with great suspicion and whose evidence should be independently confirmed on every material circumstance. In this case there was no independent evidence to corroborate the evidence of PW12 that a man came to see him in Singapore bearing a letter from the appellant with the latter's signature on it. PW12 said that he took possession of that letter which he claimed to have returned to the appellant after the latter had signed the said voucher (Exhibit P9) before him in Kuala Lumpur. The signature on P9 was however denied by the appellant and challenged by the defence which contended that the learned President only relied upon the evidence and demeanour of PW10 in coming to the conclusion that the signature on Exhibit P9 was that of the appellant without considering the evidence of another prosecution witness called Marsita Adlina bt. Abdul Rahman (PW9) who was the Personal Assistant to the

Chairman/General Manager of the company. That witness had worked with the appellant in 1980 when the appellant was holding himself out to be the General Manager of the company. There was therefore a doubt about the signature on Exhibit P9 after PW9 who had worked together with the appellant, could not recognise the signature whereas PW10, who was only a receptionist/clerk with the company in 1980 and did not work together with the appellant, claimed that she could recognise the signature. The learned President therefore only relied on evidence favourable to the prosecution when he said "Rozita (SP10) ini adalah seorang saksi yang boleh dipercayai sebab tiada satu keterangan pun menunjukkan sebaliknya" and did not consider at all the evidence which was favourable to the defence and which had raised a reasonable doubt in the prosecution's case.

As regards the ingredients for an offence under s. 4(a) of the Prevention of Corruption Act 1961, counsel for the appellant referred to the following passage of Lord Diplock in the Privy Council's case of *Public Prosecutor v. Yuvaraj* [1969] 2 MLJ 89, 90, 91:

> Where a defendant is charged with an offence under s. 4(a) of the Prevention of Corruption Act, 1961, to which s. 14 also applied, the onus lies upon the prosecution to prove the first two factual ingredients of the offence viz. (1) that a gratification was paid or given to or received by the defendant and (2) that at the time of the payment, gift or receipt he was in the employment of a public body. Upon proof of these two ingredients the existence of the third ingredient, viz. (3) that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of that public body, is to be presumed "unless the contrary is proved".

and submitted that the learned President did not make any finding as to whether the appellant was in the employment of a public body and that without such a finding the prosecution could not rely on the presumption in s. 14 of the said Act to prove that a gratification had been paid or given and received corruptly as an inducement or reward. Counsel then referred to the evidence of one Zaileni bt. Kasim (PW1), a junior trade registration officer in the Registry of Companies, who stated in evidence that 1,999,998 shares of RM1 each were allotted to RISDA. There was no doubt and it was conceded by the defence, that the appellant was an agent of the company as defined in the said Act and the learned President in his judgment stated as follows:

> Mengikut keterangan, saya tidak ragu-ragu lagi bahawa tertuduh adalah seorang ejen kepada Syarikat Pembangunan Pekebun Kecil Sdn. Bhd. Ini adalah berdasarkan kepada erti ejen yang ditafsirkan di dalam seksyen 2 Akta Pencegah Rasuah, 1961, (Semakan 1971). Ejen ialah seorang, antara lain, "employee" badan awam. Dalam kes ini ada menunjukkan bahawa tertuduh diguna khidmat (employed) oleh Syarikat Pembangunan Pekebun Kecil sepertimana surat perlantikan (P5) itu.

But the learned President did not show in his judgment and give any reasons as to why the company was a "public body" as defined in s. 2 of the said Act. Counsel for the appellant referred to *Mahesan v. Public Prosecutor* [1970] 1 MLJ 255, 259 in which case it was held by the Federal Court that the Malaysian Government Officers' Cooperative Housing Society Limited was not a "public body" as defined in s. 2 of the said Act as the service offered by it was not a service of the Government of Malaysia or of any State Government. Apart from the evidence of the said Zaileni bt. Kasim (PW1) that the shares of the company were allotted to RISDA, there was no other evidence adduced nor arguments advanced by the prosecution to show how the company could be regarded as a "public body" within the meaning of s. 2 of the said Act. I therefore agreed with counsel for the appellant that a *prima facie* case under s. 4(a) of the said Act had not been made out and that at the close of the case for the prosecution the learned President should not have called for the defence on the second amended charge.

Be that as it may, after calling on the appellant to enter on his defence and having heard his case, the learned President did not consider it adequately. Although the appellant, who elected

to give evidence on oath, was in the witness box for nearly three whole days and his evidence as recorded by the learned President filled nearly fourteen pages of type-written notes, yet the President merely dealt with the defence in four short paragraphs and did not give any reasons why he did not believe the appellant nor gave adequate reasons why he rejected his defence.

No finding, sentence or order passed by a subordinate Court should be reversed or altered on account of any error in the judgment of that Court unless such error has occasioned a failure of justice (s. 422 of the Criminal Procedure Code (FMS Cap l6). It was the submission of counsel for the appellant that there were errors in the judgment of the lower Court which have resulted in a failure of justice in this case. Counsel on both sides informed the Court that they have not been able to find any Malaysian authority on what is meant by "failure of justice". Counsel for the appellant, however, did refer me to the following passage of Fullagar J in the High Court of Australia case of *Mraz v. The Queen* [1955] 93 CLR 493, 514 concerning the meaning of the expression "miscarriage of justice" in s. 6(1) of the New South Wales Criminal Appeal Act of 1912:

> It is very well established that the proviso to s. 6(1) does not mean that a convicted person, on an appeal under the Act, must show that he ought not to have been convicted of anything. It ought to be read, and it has in fact always been read, in the light of the long tradition of the English criminal law that every accused person is entitled to a trial in which the relevant law is correctly explained to the jury and the rules of procedure and evidence are strictly followed. If there is any failure in any of these respects, and the appellant may thereby have lost a chance which was fairly open to him of being acquitted, there is, in the eye of the law, a miscarriage of justice. Justice has miscarried in such cases, because the appellant has not had what the law says that he shall have, and justice is justice according to law. It is for the Crown to make it clear that there is no real possibility that justice has miscarred.

Mr. Sri Ram also referred to the following passage in the judgment of Hedge J in the Indian case of *Krishna Murthy v. Abdul Subban* [1965] 1 Cr LJ 565, 576:

> The expression "a failure of justice has in fact occasioned thereby" found in s. 535(1), Cr PC does not connote that the Court should be of the opinion that an innocent person has been convicted or the case against the accused person is not made out beyond reasonable doubt. An accused person is entitled to be acquitted whether there was a fair trial or not if no case is made out against him. For that purpose the Legislature need not have introduced the conception of the "failure of justice" in ss. 535 and 537 Cr PC. The "failure of justice" mentioned therein is that occasioned by the contravention of the provisions in Chapter XIX, Cr. PC In law the expression "justice" comprehends not merely a just decision but also a fair trial. Sections 535 and 537, Cr. PC. have primarily in view a fair trial. For the purpose of these sections a denial of fair trial is denial of justice. One of the contents of natural justice, which is so much valued is the guarantee of a fair trial to an accused person. A fair trial is as important as a just decision. Neither the one nor the other can be sacrificed. Sacrifice of the one, in the generality of cases, is bound to lead to the sacrifice of the other. The two are closely interlinked.

I would respectfully agree with the above *dicta* of their Lordships in the High Courts of Australia and India and in so far as our present case is concerned I agreed that the appellant did not have a trial in which the relevant law has been strictly followed and has therefore lost a chance which was fairly open to him of being acquitted. The cumulative effect of the various errors in the judgment of the lower Court was that there has been a failure of justice and in the circumstances of the case the appeal should be allowed and the conviction and sentence on the second amended charge set aside. As nearly four years have lapsed since the commission of the offence, I also did not consider it fair to order a retrial. (*R. v. Saunders* [1974] CAR 248). The Public Prosecutor's cross-appeal against sentence was also dismissed and I ordered that the fine of RM5,000 and the penalty of RM23,773.50 be repaid to the appellant.

Also found at [1985] 1 CLJ 356